

**JUN 13 2003**

*City of Thousand Oaks v. Verizon Media*  
Nos. 02-55798 and 02-55816

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

RAWLINSON, Circuit Judge, Dissenting

I respectfully dissent.

As the majority acknowledges, § 4.1 of the franchise ordinance prohibits the sale or transfer of a “Franchise and any rights or obligations of the Grantee under the Franchise . . . without prior written consent of the city.”

Section 4.2 of the Franchise ordinance prohibits transfer of “[o]wnership or control of the Grantee . . . without the prior written consent of the City.”

The district court enjoined Verizon from transferring ownership of Verizon’s cable system to Adelphia. The basis of the district court’s order was its holding that transfer of the cable system violated the governing franchise ordinance.

The majority holds that the district court abused its discretion because “[t]he term franchise . . . does not encompass cable system assets other than the permit itself.” However, the majority’s hypertechnical definition of franchise is inconsistent with our precedent.

In *Charter Communications, Inc. v. County of Santa Cruz*, 304 F.3d 927 (9th Cir. 2002), we examined Santa Cruz County’s denial of consent to the transfer of a cable franchise. In considering whether the County reasonably withheld

consent to the change in ownership, we expressly ruled that it was reasonable for the County to require a demonstration of the transferee's "financial qualifications to take over the *obligations of the franchise*." *Id.* at 933 (emphasis added). If, as the majority has ruled, the transfer involved only the naked permit itself, we surely would have not found it reasonable for the County to delve into the transferee's ability to assume the Franchisee's obligations.

The majority also holds that, by raising the issue for the first time on appeal, the City and County waived their argument that the transfer violated § 4.2 of the franchise agreement. However, the record reflects that the Complaint asserted exactly that theory, and the district court expressly found that "Adelphia and Verizon have entered into an arrangement . . . that results in a significant change of de facto control . . ." (District Court Order at 10). Not only was this issue not waived, it provides an additional basis of support for the district court's ruling. More importantly of course, we may affirm on any basis finding support in the record. *See A-Z Int'l v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003).

In light of the deference with which we approach the review of governmental discretionary decisions, *see Charter Communications*, 304 F.3d at 931-32, I cannot in good conscience find an abuse of discretion on the part of the district court. I would AFFIRM the district court's judgment.

